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SUBJECT: COLOMBIAN CONSTITUTIONAL COURT AXES FORESTRY LAW

REF: A. (A) 07 BOGOTA 6535  
[1](#)B. (B) 07 BOGOTA 5444

[1](#)1. (U) SUMMARY: Colombia's Constitutional Court issued a decision overturning a controversial Forestry law for failing to adequately consult with "affected" Afro-Colombian and indigenous groups on the law's impact. While proponents claimed the law strengthened sustainable forest management, opponents argued timber companies would use it to exploit Afro-Colombian and indigenous lands. The decision will likely lead to challenges to other laws that impact Afro-Colombian or indigenous groups and fuel controversy over the GOC's consultative process. The decision also throws the commercial forestry sector into disarray without an overall legal framework. In response, the Uribe administration has introduced a new forestry law intended to have no effect on Afro-Colombian or indigenous lands. END SUMMARY

#### Court Finds Consultations Insufficient

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[1](#)2. (U) On April 28 Colombia's Constitutional Court voided Colombia's Forestry law. The Court held that the GOC failed to have "open, frank and meaningful" consultations with Afro-Colombian and indigenous groups on a government action that could "affect" them as required by International Labor Organization Convention 169 and Colombian law (ref A). Neither the Convention nor Colombian law state that the GOC must avoid actions that negatively affect Afro-Colombian or indigenous groups, but rather require a formal legal consultation process between the GOC and affected groups.

[1](#)3. (SBU) Afro-Colombian organizations that had opposed the law praised the court's decision. Some political analysts also see a positive side to the decision. Rafael Nieto, a former Vice-Minister of Justice and legal analyst, said the decision showed the GOC's increasing sensitivity to Afro-Colombian and indigenous issues. Marcela Prieto, the head of the Institute of Political Science, told us the decision demonstrated the robustness of the checks-and-balances between the executive and judicial branches.

[1](#)4. (SBU) The Court's decision surprised Lorena Garnica, a special advisor to the Ministry of Agriculture and Rural Development (MinAg), who worked on drafting the law and on the constitutional case. Garnica said the decision suggested the Constitutional Court was a "wild card." Garnica pointed out that the GOC held extensive consultations on the proposed law, including over 30 public forums with more than 2,500 Colombians in a dozen cities around the country (28 funded by USAID).

Sustainable Forestry Management or Uncontrolled Exploitation

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¶5. (U) Garnica said the Forestry law, approved in April 2006 after extensive congressional debate and input from environmental groups, created a stable investment environment for sustainable forest management. She noted that the law allowed Afro-Colombian and indigenous communities, who own the majority of Colombia's 50 million hectares of forests, to harvest their forests themselves or contract third parties to manage them. USAID provided technical assistance in developing the law and implementing regulations.

¶6. (SBU) Still, many Afro-Colombian, indigenous and environmental groups complained that the law favored private timber companies. Constanza Ussa, an anthropologist who works with Afro-Colombian and indigenous groups, said such groups worried that the law's creation of a new legal mechanism allowing timber companies to harvest or manage communally-owned forests made it easier for the companies to exploit them. Afro-Colombian and indigenous groups also argued that the law focused on the economic aspects of forests to the detriment of their environmental, spiritual and cultural values.

#### Decision Creates Uncertainty; Could Fuel Illegal Logging

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¶7. (SBU) The Court's decision will likely generate future lawsuits as it leaves uncertain what constitutes an adequate "consultation process" and an "affected" group. Lawyers for indigenous groups told us they plan to challenge other laws, including last year's Rural Development law (ref B), based on a failure to adequately consult. In addition, Ussa said Afro-Colombian and indigenous groups are likely to interpret the decision's language as support for their position that the GOC must avoid all actions that negatively affect them.

¶8. (SBU) Garnica said the patchwork regulatory structure on forest management that existed prior to the Forestry law now returns to life. Since the previous regulations lacked well-defined conservation measures and penalties, Garnica said the decision could increase the likelihood of illegal logging.

¶9. (SBU) Rafael Mejia, head of the Colombian Agricultural Association (SAC), an umbrella association of agricultural producers that includes some timber companies, strongly criticized the court's decision. Legal logging generated about USD 100 million per year prior to enacting the law, but the number began climbing in 2005 and jumped to USD 150 million in 2006 and almost USD 200 million in 2007. Mejia said the legal forestry industry was now "on hold" and would have to wait and see what happened.

#### New Forestry Legislation in Process

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¶10. (SBU) The MinAg submitted a new bill on commercial forestry to Congress which explicitly does not apply to Afro-Colombian and indigenous lands. The bill permits the government to offer concessions to commercially reforest government-owned lands. Garnica admitted the bill, as submitted, does not create an overall legal framework for forestry or strengthen enforcement measures against illegal logging. She noted however, that such measures might be added before it becomes law. Garnica expects Congress to enact the bill prior to the end of 2008.

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